Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1210

JAMES H. QUARLES, ET AL,

Appellants,

v.

J. C. GOODSON, ET AL,

Appellees.

ON APPEAL FROM THE
COURT OF CIVIL APPEALS OF TEXAS
FOURTEENTH SUPREME JUDICIAL DISTRICT

MOTION OF APPELLEES J. C. GOODSON AND WIFE, FANNIE MAE GOODSON, TO DISMISS OR AFFIRM

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MOTION OF APPELLEES J. C. GOODSON AND WIFE, FANNIE MAE GOODSON, TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Court of Civil Appeals because the Court does not have jurisdiction over the appeal of this case, and because the questions on which the decision of the Court of Civil Appeals depends are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE

This suit was brought by J. C. Goodson and wife, Fannie Mae Goodson, against James H. Quarles, individually and

as trustee of the Estate of James H. Quarles, and against E. A. Hyland, individually and as trustee, to remove a cloud on the title to certain real property owned by Mr. and Mrs. Goodson. Quarles cross-acted against Mr. and Mrs. Goodson and filed actions against American Title Company, Mrs. E. A. Biggers, and George St. Clair. The case proceeded to trial on October 14, 1974, and after all parties had rested, all parties moved for instructed verdicts. After considering the evidence, the motions, and the arguments of counsel, the presiding Judge of the 152nd Judicial District Court of Harris County, Texas, withdrew the case from the jury and instructed a verdict awarding certain affirmative relief to Mr. and Mrs. Goodson and to American Title Company. All relief prayed for by Quarles and Hyland was denied by the trial court. On November 12, 1974, a final judgment was entered by the trial court.[1] Appellants' motion for new trial was overruled on January 6, 1975.

Appellants filed the transcript with the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas on February 21, 1975, but failed to file the statement of facts within the time required by Rule 386 of the Texas Rules of Civil Procedure even though they received two extensions of time to file the statement of facts from the Court of Civil Appeals. Appellants also failed to file a brief with the Court of Civil Appeals within the time required by Rule 414 of the Texas Rules of Civil Procedure. The Court of Civil Appeals sustained the motion of Mr. and Mrs. Goodson to affirm the judgment of the trial court pursuant to Rule 415 of the Texas Rules of Civil Procedure. Quarles's motion for rehearing in the Court

[1] A copy of the judgment of the trial court is attached to Quarles' Appeal and Application for Writ of Certiorari as Appendix F.

of Civil Appeals was overruled. No motion for rehearing was filed by Hyland.

Appellants filed an appeal and petition for writ of error with the Supreme Court of Texas on August 21, 1975. On October 1, 1975, the Supreme Court of Texas refused the application for writ of error holding that there had been no reversible error by the Court of Civil Appeals. The Supreme Court of Texas overruled appellants' motion for rehearing on October 29, 1975.

In their appeal to this Court, appellants contend that they were denied a fair and impartial trial, were denied due process, and were denied a jury trial. Appellants assert jurisdiction in this Court under 28 U.S.C. § 2101; 28 U.S.C. § 2104; 28 U.S.C. § 1257; Article III, Section 2 of the United States Constitution, and under the Fifth and Fourteenth Amendments to the Constitution. Although Quarles is not licensed to practice law in the State of Texas, he purports to appeal on his own behalf and on behalf of Hyland and the surety on their appeal bond in Court of Civil Appeals, Lawyers Surety Corporation. *See Quarles* v. *State,* 398 S.W.2d 935 (Tex. Crim. App. 1966); *Quarles* v. *State,* 385 S.W.2d 395 (Tex. Crim. App. 1964), *cert. denied,* 382 U.S. 829, 86 S.Ct. 65 (1965); *Quarles* v. *State Bar of Texas,* 316 S.W.2d 797 (Tex. Civ. App. — Houston 1958, no writ), *cert. denied,* 368 U.S. 986, 82 S.Ct. 601 (1962).

Appellees except to all statements in appellants' Appeal and Application for Writ of Certiorari insofar as they vary from the above Statement of the Case and from the record of the case in the courts below.

ARGUMENTS

I.

This Court has No Jurisdiction Over the Purported Appeal by E. A. Hyland Because he is Not Appealing from the Final Judgment or Decree of the Highest Court of the State of Texas

28 U.S.C. § 1257 only allows appeals to this Court of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had,...." The highest state court in Texas that may entertain an appeal is the Supreme Court of Texas. In the instant case Hyland failed to file a motion for rehearing in the Court of Civil Appeals of Texas. The filing of such motion is a jurisdictional prerequisite for review by the Supreme Court of Texas. *Forrest* v. *Hanson,* 424 S.W.2nd 899 (Tex. Sup. 1968); *State Board of Morticians* v. *Cortez,* 368 S.W.2d 12 (Tex. Sup. 1957); Tex.R.Civ.P. 469(c). Since the Supreme Court of Texas has not reviewed the judgment of the Court of Civil Appeals insofar as it disposes of the claims of Hyland, this Court has no jurisdiction over Hyland's purported appeal. *Stratton* v. *Stratton,* 239 U.S. 55, 36 S.Ct. 26 (1915); *Fisher* v. *Carrico,* 122 U.S. 522, 7 S.Ct. 1227 (1887).

II.

Quarles has Failed to Assert a Basis for Appeal to This Court

In his jurisdictional statement Quarles asserts jurisdiction under 28 U.S.C. § 2101, 28 U.S.C. 2104 and 28 U.S.C. § 1257. The first two provisions relate to the time and manner of an appeal and do not confer jurisdiction on this Court. 28 U.S.C. § 1257 expressly permits appeal in only

two situations — where the decision below has invalidated a treaty or statute of the United States, or where it is contended that the statute of a state is repugnant to the Constitution. Quarles's jurisdictional statement alleges neither of these situations.[2]

III.

The Case Presents No Substantial Question For Review by This Court

The judgment of the Texas trial court was based upon the factual finding by that court that appellants had wrongfully clouded the title of land owned by Mr. and Mrs. Goodson, and that Mr. and Mrs. Goodson were entitled to have this cloud removed by judicial decree. It has long been established that a question of fact decided by a state trial court is a local question and not a proper matter for review by this Court. *Sylvester* v. *State of Washington,* 215 U.S. 80, 30 S.Ct. 25 (1909); *Chapman & Dewey Land Co.* v. *Bigelow,* 206 U.S. 41, 27 S.Ct. 679 (1907).

Appellants' due process allegations focus upon the alleged denial of a fair and impartial trial and the alleged denial of a jury trial. The only decision cited in support of appellants' due process arguments, *United States* v. *Meyer,* 462 F.2d 827 (D.C. Cir. 1972), stands for the proposition, inter alia, that due process of law requires that an accused person be afforded an adjudication before an impartial judge. Contrary to appellants' bald assertions, there was no im-

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[2] Because of confusion in terminology used by Quarles in his "Appeal and Application for Writ of Certiorari" and other instruments he has filed with the Court, appellees are unsure whether Quarles may later contend that he is seeking review by writ of certiorari. Should this contention be made, appellees would respectfully show that Quarles has asserted no basis for review by this Court of the non-federal grounds upon which the judgments below are based and that certiorari should be denied.

partiality or unfairness during the trial of this case. The fact that the trial judge, after reviewing the evidence, ruled against appellants is not evidence of impartiality or unfairness. Appellants complain of their inability to show such prejudice because of their denial of a statement of facts. Appellees would respectfully show that a statement of facts was prepared at the request of appellants, but appellants refused to pay the court reporter for the statement of facts.[3] Appellants' own lack of diligence in securing and filing a statement of facts certainly does not constitute a denial of due process reviewable by this Court.

As a further basis for seeking review by this Court, appellants assert that they were denied a jury trial. This Court has held that the right to a jury trial in a civil case is not guaranteed by the due process clause of the Fifth Amendment or by any other provision of the Constitution. *Ex Parte Wall,* 107 U.S. 265, 288, 2 S.Ct. 569, 589 (1883); *accord, Welch* v. *Tennessee Valley Authority,* 108 F.2d 95 (6th Cir. 1939), *cert. denied,* 309 U.S. 688, 60 S.Ct. 889 (1940). In the instant case a jury was impaneled and all of the evidence was presented to the jury. At the conclusion of the evidence, however, the trial court concluded that the right of Mr. and Mrs. Goodson to have the cloud on their title removed had been established as a matter of law. In accordance with Texas practice, the trial court thus directed a verdict for appellees. The constitutionality of a directed verdict, or a judgment based upon a trial without a jury, has long been upheld by Texas courts. *Parker* v. *Leman,* 10 Tex. 116 (1853); *Wooten* v. *Dallas Hunting &*

[3] For a more detailed explanation of the facts surrounding Quarles's failure to file a statement of facts appellees would direct the Court's attention to their opposition to appellants' third application for extension of time to file statement of facts and application for writ of mandamus, contained among the records certified by the clerk of the Court of Civil Appeals.

Fishing Club, 427 S.W. 2d 344 (Tex. Civ. App. — Dallas 1968, no writ). Furthermore, this Court has upheld the constitutionality of federal rules allowing directed verdicts. *Galloway* v. *United States,* 319 U.S. 372, 63 S.Ct. 1077 (1943).

Appellees would further show that the judgment of the trial court removing the cloud on their title was equitable in nature.[4] An action brought by one in possession of land to quit his title to land is an equitable action and affords no right to a jury trial. *Humble Oil & Refining Co.* v. *Sun Oil Co.,* 190 F.2d 191 (5th Cir. 1951), *rehearing denied,* 191 F.2d 705, *cert. denied,* 342 U.S. 920, 72 S.Ct. 367 (1952).

CONCLUSION

Appellees respectfully submit that the questions upon which appellants predicate their appeal do not authorize jurisdiction by this Court, and, alternatively, are so unsubstantial as not to need further argument. Appellees respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in this cause by the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas.

Respectfully submitted,

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.....

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[4] Texas courts have both equity and law jurisdiction and all remedies and rights are administered together in one proceeding. *Smith* v. *Doak,* 3 Tex. 215 (1848).

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that three (3) copies of the foregoing Motion to Dismiss or Affirm have this the ..... day of March, 1976, been served upon James H. Quarles, and upon each counsel of record, in accordance with Rule 33 of this Court, by depositing the same in the United States mail with first class postage prepaid, addressed to such persons at their post office addresses.

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SIMEON TIMOTHY LAKE III